

**Bankruptcy Proceeding Documents,
including copies of Assignment of Certain
Inventions from Stanley/Fenne
to Pixelon, Inc. (at p. 32 ff)**

AUG 22 2000

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Debtor-in-Possession

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re: Case No. SA 00-13425 LR

PIXELON CORPORATION, a California
Corporation,

Debtor and
Debtor-in-Possession

DEBTOR'S REPLY TO DAVID KIM
STANLEY AKA ADAM MICHAEL
FENNE, DAVID SNYDER, AND SHEILA
ROBERTSON'S OBJECTION TO
MOTION FOR AUTHORITY TO
OBTAIN SECURED FINANCING

(11 U.S.C. §364 (c) & (d))

DATE: August 28, 2000
TIME: 10:30 A.M.
PLACE: Courtroom 5D

411 West Fourth Street
Santa Ana, CA 92701

49343.1

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Pixelon Corporation dba Pixelon.com, the debtor and debtor-in-possession herein (the "Debtor" or "Pixelon"), hereby replies to the Objection to Debtor's Motion for Authority to Obtain Secured Financing filed by David Kim Stanley aka Adam Michael Fenne, David Snyder, and Sheila Robertson (the "Opposition").

By the Debtor's Motion for Authority to Obtain Secured Financing (the "Motion"), the Debtor seeks authority to borrow \$1,000,000 from Robert Petersen, or his designee (the "Loan"). Robert Petersen is a principal of the Petersen Publishing Co. which publishes magazines such as Motor Trend, Powder, and Teen. The Loan is to be secured by a lien on substantially all of the Debtor's assets, including intellectual property. The Loan is convertible, at Petersen's option, to an approximately 10% equity interest in the Debtor. As evidenced by his willingness to make this bridge loan, Petersen is interested in eventually acquiring either the Debtor or its assets by making further infusions of capital to the estate which will facilitate a substantial payment on allowed general unsecured claims. Without the Loan, the Debtor will have no funds to make its technology marketable and will be forced to shut down with little or no payout to general unsecured creditors. As indicated in the Debtor's Chapter 11 schedules, intellectual property is the Debtor's largest asset.

As indicated in the Motion, the Debtor has an immediate need for the proceeds of the Loan to pay its overhead expenses and to prepare its technology for potential customers. Even a brief continuance would prove fatal to the Debtor's reorganization effort and jeopardize any hope of the unsecured creditors receiving a distribution. Including the \$175,000 the Debtor raised from the sale of its Balthaser stock in July 2000, the proceeds of which were used to pay insurance and other expenses, the Debtor currently holds cash in the approximate amount of \$45,000 which is only expected to last for less than two weeks.

In the Opposition, David Kim Stanley aka Adam Michael Fenne ("Stanley/Fenne") asserts that he is the owner of the Debtor's intellectual property and therefore the Debtor's intellectual

1 property cannot be used as collateral for the Loan. As discussed more fully below, Stanley/Fenne
2 does not own the Debtor's intellectual property and to the extent that Stanley/Fenne had any
3 interest in the Debtor's intellectual property, Stanley/Fenne transferred it to the Debtor on July 14,
4 1999. Accordingly, the Loan to Petersen should be approved in the form described in the Motion.

5 II.

6 BACKGROUND

7 A. The Debtor and Its Business.

8 The Debtor is a developer of technologies to deliver high quality media content, such as
9 full-screen streaming video, over the Internet. The key to the Debtor's reorganization strategy
10 will be to stay on the cutting edge of Internet media technology by developing new generations
11 of compression and playback technologies. Virtually every major media company and industry
12 analyst believes that movies, television shows, and other similar media will eventually be
13 broadcast over the Internet. Up until now, however, Internet media player technology has not
14 been able to deliver a high quality full-screen video program over the Internet due to the massive
15 size of video files. The Debtor, however, is on the verge of making a major breakthrough in high
16 quality full-screen video delivered over the Internet with its unique proprietary technologies.

17 In mid 1999, the Debtor developed and introduced its first Internet media player, using
18 what is now known as "Generation 1" technology. In late 1999, the Debtor contracted with Loco
19 Labs in San Jose, California to develop the Debtor's "Generation 2" full-screen Internet media
20 player which is a state-of-the-art product that is currently offered by the Debtor. Because the
21 Generation 2 technology current offered by the Debtor was developed by an outside contractor,
22 most of whose work was done after Stanley/Fenne's departure from the Debtor, Stanley/Fenne
23 has no interest in the Debtor's Generation 2 technology.

24 The Debtor has already made significant progress on its "Generation 3" technology and
25 estimates that it will be able to perfect its Generation 3 technology in the next few months.
26 Additional development costs are expected to be \$250,000. Needless to say, Stanley/Fenne has
27 no interest in the Debtor's Generation 3 technology currently being developed because all of the
28 Debtor's Generation 3 technology was developed after Stanley/Fenne was ousted from the

1 Debtor. The Debtor's Generation 3 full-screen Internet media player represents a major leap
2 over current Internet media player technology and is far more advanced than any other Internet
3 media player in existence. This will give the Debtor a strong competitive advantage over its
4 competitors. The Debtor's Generation 3 technology is eagerly anticipated and is already
5 generating a great deal of interest and excitement among major media companies such as
6 Twentieth Century Fox and Warner Brothers. These media companies know that the Debtor's
7 Generation 3 technology will make the goal of broadcasting movies and other programs over the
8 Internet a reality. As indicated in the Motion, the Debtor cannot complete its Generation 3
9 technology without the proceeds of the Petersen Loan.

10 B. The Debtor's Relationship with Stanley/Fenne.

11 Using the alias "Adam Michael Fenne," Stanley/Fenne founded the Debtor in 1998 and
12 served as, among other positions, the Debtor's president and chairman of the board while he was
13 a fugitive from justice. The Debtor is informed that in 1989, Stanley/Fenne pleaded guilty to
14 over 50 counts of fraud and embezzlement in Virginia and Tennessee. Stanley/Fenne was
15 ordered to pay restitution which reduced his lengthy prison sentence to eight years. However,
16 Stanley/Fenne fled in 1996 with restitution only partly repaid. As a result, Stanley/Fenne was
17 placed on the Commonwealth of Virginia's most-wanted list. On or about April 12, 2000,
18 Stanley/Fenne surrendered to Virginia authorities who were about to capture him after a four-
19 year manhunt. Stanley/Fenne is currently incarcerated in the Wise County, Virginia jail and will
20 likely be extradited to Tennessee for further incarceration if and when he is ever released by
21 Virginia authorities.

22 In 1999, the Debtor's board of directors and shareholders became increasingly concerned
23 with Stanley/Fenne's irrational management behavior. For example, Stanley/Fenne entered into
24 numerous contracts that were detrimental to the Debtor. There are also several well documented
25 instances of Stanley/Fenne's abusive management style. Stanley/Fenne also gave away
26 substantial amounts of the Debtor's stock with no apparent benefit to the Debtor and without
27 board approval.
28

1 The most well publicized of Stanley/Fenne's numerous outrageous actions was when
2 Stanley/Fenne squandered \$16.3 million (more than half of the Debtor's initial capital) on a
3 lavish "launch" party in Las Vegas, Nevada dubbed "iBash." iBash featured live performances by
4 the Who, Natalie Cole, Faith Hill, and the Dixie Chicks, among others. The Debtor's board had
5 authorized \$3 to \$4 million for the launch party and Stanley/Fenne exceeded his authority by a
6 factor of four. Stanley/Fenne agreed to pay the PAX television network \$1 million to broadcast
7 iBash and also gave PAX all of the advertising revenue from the broadcast. PAX should have
8 paid the Debtor to air iBash but Stanley/Fenne decided to pay PAX instead. Stanley/Fenne also
9 agreed to pay Faith Hill an additional \$250,000 as a result of iBash being shown on PAX TV
10 even though the Debtor had already paid Faith Hill \$500,000 which included the right to
11 broadcast the performance on television. When Faith Hill's representative spread the word about
12 Stanley/Fenne's largesse, the Dixie Chicks, who are friends of Faith Hill, also asked the Debtor
13 for another \$250,000 which Stanley/Fenne agreed to pay. Stanley/Fenne never sought nor
14 received board or management approval for these expenditures.

15 Because of Stanley/Fenne's bizarre behavior and reckless spending, the Debtor's board
16 decided to terminate Stanley/Fenne's involvement with the Debtor shortly after iBash in
17 November 1999. On or about April 10 or 11, 2000, Stanley/Fenne revealed to the Debtor that he
18 was an imposter and that Adam Michael Fenne was an alias. As a result, on May 17, 2000, the
19 Debtor brought a fraud action against Stanley/Fenne. A copy of the Debtor's complaint against
20 Stanley/Fenne is attached to the Declaration of Peter F. Foley (the "Foley Declaration") as Exhibit
21 "1."

22 The Debtor would like to emphasize that all of its former personnel who were
23 Stanley/Fenne's allies or co-conspirators were dismissed before the commencement of the instant
24 Chapter 11 case and the Debtor's current management has no relationship with Stanley/Fenne.
25 The Debtor's current management has been directing the Debtor's operations since June 20,
26 2000. New management, in conjunction with the Debtor's highly experienced technology team,
27 has continued to develop the Debtor's proprietary compression and playback technologies for the
28

1 Internet and digital media. New management has also drastically reduced the Debtor's operating
2 expenses.

3 C. Events Precipitating this Chapter 11 Case

4 Like many other so called "dot-com" companies, poor cost control and reckless spending
5 by the Debtor's former management, especially Stanley/Fenne, precipitated a severe cash flow
6 crisis in the Debtor's operations. Because of Stanley/Fenne and other former members of the
7 Debtor's management's behavior, the Debtor is the subject of numerous lawsuits pending
8 throughout the country which threatened to exhaust the Debtor's resources.

9 Its financial problems notwithstanding, the Debtor does own state of the art proprietary
10 compression and playback technologies for distributing media over the Internet. Because of the
11 Debtor's future potential, in early 2000, the Debtor had arranged for bridge financing in the
12 amount of \$2,000,000 from Alliance Atlantis Communications, Inc ("Alliance Atlantis"). Alliance
13 Atlantis, based in Toronto Canada, is a leading broadcaster, creator, and distributor of television
14 shows including Gene Roddenberry's Final Conflict, Peter Benchley's Amazon, Total Recall 2070,
15 and Beastmaster and movies including Scary Movie, Sunshine, and the Cell. In addition, the
16 Debtor had entered into a contract with Alliance Atlantis where the Debtor would encode 100
17 movies for Alliance Atlantis for approximately \$350,000.

18 On April 27, 2000, while the loan and contract from Alliance Atlantis were about to close,
19 certain creditors and purported creditors: Ronald Clear, Snowden Electric Company, Single
20 Source, and Lawrence J. Winslow (the "Petitioning Creditors"), through their representative
21 Michael W. Kinney, filed an involuntary Chapter 7 petition against the Debtor (the "Involuntary
22 Petition").

23 Because the Debtor believed the Involuntary Petition was without merit, the Debtor
24 initially prepared to move to dismiss the Involuntary Petition along with a prayer for damages and
25 a request for a bond against the Petitioning Creditors. Unfortunately, the Involuntary Petition
26 alarmed Alliance Atlantis so much that it withdrew its support of the Debtor within days of the
27 Involuntary Petition being filed.
28

1 Because the Involuntary Petition took away the capital the Debtor needed to develop its
2 technology, the Debtor could not survive even if the Involuntary Petition were dismissed.

3 Accordingly, the Debtor was forced to commence the instant Chapter 11 case in order to stabilize
4 its financial problems so that it can concentrate on developing and marketing its technology while
5 at the same time seeking other potential investors.

6 **D. The Debtor's Intellectual Property.**

7 As described above, the Debtor owns proprietary technology to deliver high quality media
8 over the Internet. There are three main elements of the Debtor's intellectual property: (1) an
9 encoding system, (2) an encryption system, and (3) a decoding system. These elements work
10 together to allow high image quality full-screen video media to be played over the Internet. The
11 encoding system compresses the video file so that it can be transmitted over the Internet at high
12 speeds, the encryption system prevents unauthorized viewing or copying of the media (this is very
13 important to the media companies), and the decoding system, or "player", plays the media on the
14 consumer's computer. The Debtor currently has nine pending patents on its technology. Attached
15 to the Declaration of Peter F. Foley (the "Foley Declaration") as Exhibit "2" is a list of the
16 Debtor's current pending patents.

17 **III.**

18 **THE DEBTOR'S INTELLECTUAL PROPERTY DOES NOT BELONG TO**

19 **STANLEY/FENNE**

20 **A. Stanley/Fenne Did Not Invent the Debtor's Technology.**

21 Notwithstanding Stanley/Fenne's misrepresentations to the public and the Debtor's
22 investors that he is an expert computer programmer, in reality, Stanley/Fenne never had the
23 technical background, training, or expertise to have developed any of the Debtor's technology.
24 Stanley/Fenne was a fugitive from justice who did not have a technical background and only posed
25 as a computer programmer named "Adam Michael Fenne."

26 The bulk of the work on the Debtor's Generation 1 technology was actually performed by
27 Troy Kisky ("Kisky"), a computer programmer employed by the Debtor.
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1 California Labor Code section 2860 provides:

2 Every person which an employee acquires by virtue of his employment, except the
3 employer, on which is due to him from his employer, belongs to the employer,
4 whether acquired lawfully or unlawfully, or during or after the expiration of the
5 term of his employment.

6 Cal. Labor Code § 2860. Goodyear Tire & Rubber Co. of Akron, Ohio, v. Miller, 22 F.2d 353 (9th
7 Cir. 1927) (Invention made by employee hired to make it belonged to employer).

8 Because Kisky was an employee hired to do computer programming and not an outside
9 contractor, all intellectual property developed by Kisky while employed by the Debtor is the
10 Debtor's property. A copy of Kisky's 1999 IRS Form W-2 issued by the Debtor is attached to the
11 Foley Declaration as Exhibit "3."

12 As previously discussed, the Debtor's board ousted Stanley/Fenne in November of 1999.
13 The Debtor's current Generation 2 technology was developed beginning in late 1999 by the
14 Debtor's outside programming contractor Loco Labs in San Jose, California. A copy of Loco
15 Labs' 1999 IRS Form 1099 (in the amount of \$1,033,709.57) issued by the Debtor is attached to
16 the Foley Declaration as Exhibit "4." Because the current technology offered by the Debtor was
17 developed by an outside contractor, most of whose work was done after Stanley/Fenne's departure
18 from the Debtor, Stanley/Fenne has no interest in the Debtor's Generation 2 technology. Needless
19 to say, Stanley/Fenne has no interest in the Debtor's Generation 3 technology currently being
20 developed because all of the Debtor's Generation 3 technology was developed after Stanley/Fenne
21 was ousted from the Debtor.

22 **B. Stanley/Fenne Assigned All of His Intellectual Property to the Debtor.**

23 Notwithstanding the fact that Stanley/Fenne did not develop any of the Debtor's
24 technology, the Debtor's nine pending patents, filed between July 12, 1999 and October 28, 1999,
25 are registered in the name of "Adam Michael Fenne." This is not particularly surprising since
26 Stanley/Fenne was the Debtor's president. However, regardless of the origin, "Adam Michael
27 Fenne's" intellectual property belongs to the Debtor. On July 14, 1999, Stanley/Fenne executed,
28 as "Adam Michael Fenne," an Assignment of Intellectual Property Rights Agreement (the "IP
Assignment") with the Debtor. A copy of the IP Assignment is attached to the Foley Declaration

as Exhibit "5." As indicated in the IP Agreement, Stanley/Fenne assigned all of his right, title, and interest in any inventions from and after January 1, 1997 to the Debtor. Accordingly, to the extent Stanley/Fenne actually developed any intellectual property while he was an employee of the Debtor, such intellectual property belongs to the Debtor. As discussed above, the Debtor does not believe Stanley/Fenne developed any of the Debtor's technology. Rather, such assignments are standard in the technology industry to reassure investors that the company actually owns its technology.

After Stanley/Fenne's departure from the Debtor, Stanley Fenne and the Debtor entered into a Severance Agreement dated December 27, 1999 (the "Severance Agreement"). A copy of the Severance Agreement is attached to the Foley Declaration as Exhibit "6." Stanley/Fenne's assertion that the \$660,000 payment referenced in the Severance Agreement is consideration for Stanley/Fenne's assigning intellectual property to the Debtor is nonsensical because the Debtor already owned all of its intellectual property at that time. As indicated by the plain language of the Severance Agreement, the \$660,000 payment was to purchase the Debtor's stock held by Stanley/Fenne.

C. Stanley/Fenne Is Currently Illegally Using the Debtor's Technology.

After Stanley/Fenne was ousted from the Debtor, Stanley/Fenne started several new companies including companies known as Landragon.com, Alios.com, Axilar.com, and Lazaronventures.com. As indicated in the Severance Agreement sections 3.1 and 3.2, Stanley/Fenne is prohibited from using the Debtor's intellectual property and from competing with the Debtor. Furthermore, on October 10, 1999, Stanley/Fenne and the Debtor entered into a Confidentiality and Trade Secret Agreement (the "Confidentiality Agreement") whereby Stanley/Fenne agreed not to disclose, remove, or use any of the Debtor's proprietary technology. A copy of the Confidentiality Agreement is attached to the Foley Declaration as Exhibit "7." The Debtor is informed that Stanley/Fenne is currently using the Debtor's media player on the Lazaronventures.com website and intends to take action to enjoin such use. It is important to note that the Agreement in Principal dated May 6, 2000 between Stanley/Fenne and the Debtor, referred to in the Opposition, which purportedly allows Stanley/Fenne to use the Debtor's media player,

never became effective because its conditions precedent were never satisfied. To the extent Stanley/Fenne relied on the Agreement in Principal to give the Debtor any source codes, such intellectual property, as discussed above, is already the Debtor's property that was illegally taken by Stanley/Fenne (see Confidentiality Agreement).

IV.

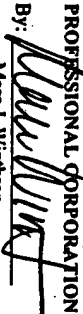
CONCLUSION

The Stanley/Fenne Opposition does not object to the approval of the Loan but does attempt to prohibit the use of the Debtor's intellectual property as collateral. As demonstrated, however, the Debtor owns its intellectual property and therefore the Debtor respectfully requests that the Court enter an order:

A. authorizing the Debtor to borrow \$1,000,000 from Robert Petersen, or his designee, at an interest rate of 12% per annum (the "Loan"). The Loan shall be due in one year with principal and accrued interest payable at the termination of the Loan. The Loan shall be secured by substantially all of the Debtor's assets and shall be convertible to a 10% equity interest in the Debtor; and

B. granting such other relief as the Court deems necessary and proper.

Dated: August 21, 2000

WINTHROP COUCHOT
PROFESSIONAL CORPORATION
By: 
Marc J. Winthrop
Charles Liu
Proposed Attorneys for Debtor and
Debtor-in-Possession

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DECLARATION OF PETER H. FOLEY

I, Peter H. Foley, hereby declare and state as follows:

1. I am the President of Pixelion Corporation dba Pixelion.com, the debtor and debtor-in-possession herein (the "Debtor" or "Pixelion"), and am authorized to make this Declaration on its behalf. The matters stated herein are within my own personal knowledge and if called as a witness, I could and would competently testify thereto.

2. By the Debtor's Motion for Authority to Obtain Secured Financing (the "Motion"), the Debtor seeks authority to borrow \$1,000,000 from Robert Petersen, or his designee (the "Loan"). Robert Petersen is a principal of the Petersen Publishing Co. which publishes magazines such as Motor Trend, Powder, and Teen. The Loan is to be secured by a lien on substantially all of the Debtor's assets, including intellectual property. The Loan is convertible, at Petersen's option, to an approximately 10% equity interest in the Debtor. Petersen has expressed a strong interest in eventually acquiring either the Debtor or its assets by making further infusions of capital to the estate which will facilitate a substantial payment on allowed general unsecured claims. Without the Loan, the Debtor will have no funds to make its technology marketable and will be forced to shut down with little or no payout to general unsecured creditors. As indicated in the Debtor's Chapter 11 schedules, intellectual property is the Debtor's largest asset.

3. As indicated in the Motion, the Debtor has an immediate need for the proceeds of the Loan to pay its overhead expenses and to prepare its technology for potential customers. A brief continuance would prove fatal to the Debtor's reorganization effort and jeopardize any hope of the unsecured creditors receiving a distribution. Including the \$175,000 the Debtor raised from the sale of its Balhaster stock in July 2000, the proceeds of which were used to pay insurance and other expenses, the Debtor currently holds cash in the approximate amount of \$45,000 which is only expected to last for less than two weeks.

4. The Debtor is a developer of technologies to deliver high quality media content, such as full-screen streaming video, over the Internet. The key to the Debtor's reorganization strategy will be to stay on the cutting edge of Internet media technology by developing new generations of compression and playback technologies. Virtually every major media company and

1 industry analysts believes that movies, television shows, and other similar media will eventually be
2 broadcast over the Internet. Up until now, however, Internet media player technology has not been
3 able to deliver a high quality full-screen video program over the Internet due to the massive size of
4 video files. The Debtor, however, is on the verge of making a major breakthrough in high quality
5 full-screen video delivered over the Internet with its unique proprietary technologies.

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7 5. In mid 1999, the Debtor developed and introduced its first Internet media player,
8 using what is now known as "Generation 1" technology. In late 1999, the Debtor contracted with
9 Loco Labs in San Jose, California to develop the Debtor's "Generation 2" full-screen Internet
10 media player. It is a state-of-the-art product that is current offered by the Debtor. Because the
11 Generation 2 technology current offered by the Debtor was developed by an outside contractor,
12 most of whose work was done after Stanley/Fenne's departure from the Debtor, Stanley/Fenne has
13 no interest in the Debtor's Generation 2 technology.

14
15 6. The Debtor has already made significant progress on its "Generation 3" technology
16 and estimates that it will be able to perfect its Generation 3 technology in the next few months with
17 an additional \$250,000 in development cost. Needless to say, Stanley/Fenne has no interest in the
18 Debtor's Generation 3 technology currently being developed because all of the Debtor's
19 Generation 3 technology was developed after Stanley/Fenne was ousted from the Debtor. The
20 Debtor's Generation 3 full-screen Internet media player represents a major leap over current
21 Internet media player technology and is far more advanced than any other Internet media player in
22 existence. This will give the Debtor a strong competitive advantage over its competitors. The
23 Debtor's Generation 3 technology is eagerly anticipated and is already generating a great deal of
24 interest and excitement among major media companies such as Twentieth Century Fox and Warner
25 Brothers. These media companies know that the Debtor's Generation 3 technology will make the
26 goal of broadcasting movies and other programs over the Internet a reality. As indicated in the
27 Motion, the Debtor cannot complete its Generation 3 technology without the proceeds of the
28 Petersen Loan.

7. Using the alias "Adam Michael Fenne," Stanley/Fenne founded the Debtor in 1998
and served as, among other positions, the Debtor's president and chairman of the board while he

1 was a fugitive from justice. The Debtor is informed that in 1989, Stanley/Fenne pleaded guilty to
2 over 50 counts of fraud and embezzlement in Virginia and Tennessee. Stanley/Fenne was ordered
3 to pay restitution which reduced his lengthy prison sentence to only eight years. Nevertheless,
4 Stanley/Fenne fled in 1996 with restitution only partly repaid. As a result, Stanley/Fenne made the
5 Commonwealth of Virginia's most-wanted list. On or about April 12, 2000, Stanley/Fenne
6 surrendered to Virginia authorities who were about to capture him after a four-year manhunt.
7 Stanley/Fenne is currently incarcerated in the Wise County, Virginia jail and will likely be
8 extradited to Tennessee for further incarceration assuming he is ever released by Virginia
9 authorities.

10
11 8. In 1999, the Debtor's board of directors and shareholders became increasingly
12 concerned with Stanley/Fenne's irrational management behavior. For example, Stanley/Fenne
13 entered into numerous contracts that were detrimental to the Debtor. There are also several well
14 documented instances of Stanley/Fenne's abusive management style. Stanley/Fenne also gave
15 away substantial amounts of the Debtor's stock with no apparent benefit to the Debtor and without
16 board approval.

17 9. The most well publicized of Stanley/Fenne's numerous outrageous actions was
18 when Stanley/Fenne squandered \$16.3 million, more than half of the Debtor's initial capital, on a
19 lavish "launch" party in Las Vegas, Nevada dubbed "iBash." iBash featured live performances by
20 the Who, Natalie Cole, Faith Hill, and the Dixie Chicks, among others. The Debtor's board had
21 authorized \$3 to \$4 million for the launch party and Stanley/Fenne exceeded his authority by a
22 factor of four. Stanley/Fenne agreed to pay the PAX television network \$1 million to broadcast
23 iBash and also gave PAX all of the advertising revenue from the broadcast. PAX should have paid
24 the Debtor to air iBash but Stanley/Fenne decided to pay PAX instead. Stanley/Fenne also agreed
25 to pay Faith Hill \$250,000 as a result of iBash being shown on PAX TV even though the Debtor
26 had already paid Faith Hill \$500,000 which included the right to broadcast the performance on
27 television. When Faith Hill's representative spread the word about Stanley/Fenne's largesse, the
28 Dixie Chicks, who are friends of Faith Hill, also asked the Debtor for another \$250,000 which
Stanley/Fenne agreed to pay. Stanley/Fenne never sought nor received board or management

1 approval for these expenditures.

2 10. Because of Stanley/Fenne's bizarre behavior and reckless spending, the Debtor's
3 board decided to terminate Stanley/Fenne's involvement with the Debtor shortly after iBash in
4 November 1999. On or about April 10 or 11, 2000, Stanley/Fenne revealed to the Debtor that he
5 was an imposter and that Adam Michael Fenne was an alias. As a result, on May 17, 2000, the
6 Debtor brought a fraud action against Stanley/Fenne. A copy of the Debtor's complaint against
7 Stanley/Fenne is attached hereto as Exhibit "1."

8 11. The Debtor would like to emphasize that all of its former personnel who were
9 Stanley/Fenne's allies or co-conspirators were dismissed before the commencement of the instant
10 Chapter 11 case and the Debtor's current management has no relationship with Stanley/Fenne.
11 The Debtor's current management has been directing the Debtor's operations since June 20, 2000.
12 New management, in conjunction with the Debtor's highly experienced technology team, has
13 continued to develop the Debtor's proprietary compression and playback technologies for the
14 Internet and digital media. New management has also drastically reduced the Debtor's operating
15 expenses.

16 12. Like many other so called "dot-com" companies, poor cost control and reckless
17 spending by the Debtor's former management, especially Stanley/Fenne, precipitated a severe cash
18 flow crisis in the Debtor's operations. Because of Stanley/Fenne and other former members of the
19 Debtor's management's behavior, the Debtor is the subject of numerous lawsuits pending
20 throughout the country which threatened to exhaust the Debtor's resources.

21 13. Notwithstanding the Debtor's financial problems, the Debtor owns state of the art
22 proprietary compression and playback technologies for distributing media over the Internet.
23 Because of the Debtor's future potential, in early 2000, the Debtor had arranged for bridge
24 financing in the amount of \$2,000,000 from Alliance Atlantis Communications, Inc ("Alliance
25 Atlantis"). Alliance Atlantis, based in Toronto Canada, is a leading broadcaster, creator, and
26 distributor of television shows including Gene Roddenberry's Final Conflict, Peter Benchley's
27 Amazon, Total Recall 2070, and Beasmaster and movies including Scary Movie, Sunshine, and
28 the Cell. In addition, the Debtor had entered into a contract with Alliance Atlantis where the

Debtor would encode 100 movies for Alliance Atlantis for approximately \$350,000.

14. On April 27, 2000, while the loan and contract from Alliance Atlantis were about to close, certain creditors and purported creditors: Ronald Clear, Snowden Electric Company, Single Source, and Lawrence J. Winslow (the "Petitioning Creditors"), through their representative Michael W. Kinney, filed an involuntary Chapter 7 petition against the Debtor (the "Involuntary Petition").

15. Because the Debtor believes the Involuntary Petition was without merit, the Debtor initially prepared to move to dismiss the Involuntary Petition along with a prayer for damages and a request for a bond against the Petitioning Creditors. Unfortunately, the Involuntary Petition alarmed Alliance Atlantis so much that it withdrew its support of the Debtor within days of the Involuntary Petition being filed.

16. Because the Involuntary Petition took away the capital the Debtor needed to develop its technology, the Debtor could not survive even if the Involuntary Petition were dismissed. Accordingly, the Debtor was forced to commence the instant Chapter 11 case in order to stabilize problems so that it can concentrate on developing and marketing its technology without the same time seeking other potential investors.

17. As described above, the Debtor owns proprietary technology to deliver high quality media over the Internet. There are three main elements of the Debtor's intellectual property: 1) an encoding system, 2) an encryption system, and 3) a decoding system. These elements work together to allow high image quality full-screen video media to be played over the Internet. The encoding system compresses the video file so that it can be transmitted over the Internet at high speeds, the encryption system prevents unauthorized viewing or copying of the media (this is very important to the media companies), and the decoding system, or "player", plays the media on the consumer's computer. The Debtor currently has nine pending patents on its technology. Attached hereto as Exhibit "2" is a list of the Debtor's current pending patents.

18. Notwithstanding Stanley/Fenne's misrepresentations to the public and the Debtor's investors that he is an expert computer programmer, in reality, Stanley/Fenne never had the technical background, training, or expertise to have developed any of the Debtor's technology.

Stanley/Fenne was a fugitive from justice who did not have a technical background and only posed as a computer programmer named "Adam Michael Fenne."

19. The bulk of the work on the Debtor's Generation 1 technology was actually performed by Troy Kisky ("Kisky"), a computer programmer employed by the Debtor. Because Kisky was an employee and not an outside contractor, all intellectual property developed by Kisky while employed by the Debtor is the Debtor's property. A copy of Kisky's 1999 IRS Form W-2 issued by the Debtor is attached hereto as Exhibit "3."

20. As previously discussed, the Debtor's board ousted Stanley/Fenne in November of 1999. The current Generation 2 technology was developed beginning in late 1999 by the Debtor's outside programming contractor Loco Labs in San Jose, California. A copy of Loco Labs' 1999 IRS Form 1099 (in the amount of \$1,033,709.57) issued by the Debtor is attached hereto as Exhibit "4." Because the current technology offered by the Debtor was developed by an outside contractor, most of whose work was done after Stanley/Fenne's departure from the Debtor, Stanley/Fenne has no interest in the Debtor's Generation 2 technology. Needless to say, Stanley/Fenne has no interest in the Debtor's Generation 3 technology currently being developed because all of the Debtor's Generation 3 technology was developed after Stanley/Fenne was ousted from the Debtor.

21. Notwithstanding the fact that Stanley/Fenne did not develop any of the Debtor's technology, the Debtor's nine pending patents, filed between July 12, 1997 and October 28, 1999, are registered in the name of "Adam Michael Fenne." Nevertheless, all of "Adam Michael Fenne's" intellectual property belongs to the Debtor. On July 14, 1999, Stanley/Fenne executed, as "Adam Michael Fenne," an Assignment of Intellectual Property Rights Agreement (the "IP Assignment") with the Debtor. A copy of the IP Assignment is attached hereto as Exhibit "5." As indicated in the IP Assignment, Stanley/Fenne assigned all of his right, title, and interest in his inventions since January 1, 1997 to the Debtor. Accordingly, to the extent Stanley/Fenne actually developed any intellectual property while he was an employee of the Debtor, such intellectual property belongs to the Debtor. As discussed above, the Debtor does not believe Stanley/Fenne developed any of the Debtor's technology. Such assignments are standard in the technology

1 entered into a Severance Agreement dated December 27, 1999 (the "Severance Agreement"). A
2 copy of the Severance Agreement is attached hereto as Exhibit "6." Stanley/Fenne's assertion that
3 the \$660,000 payment referenced in the Severance Agreement is consideration for Stanley/Fenne's
4 assigning intellectual property to the Debtor is nonsensical because the Debtor already owned all of
5 its intellectual property at that time

6
7 23. After Stanley/Fenne was ousted from the Debtor, Stanley/Fenne started several new
8 companies including companies known as Landragon.com, Ailos.com, Axlar.com, and
9 Lazaronventures.com. As indicated in the Severance Agreement sections 3.1 and 3.2,
10 Stanley/Fenne is prohibited from using the Debtor's intellectual property and from competing with
11 the Debtor. Furthermore, on October 10, 1999, Stanley/Fenne and the Debtor entered into a
12 Confidentiality and Trade Secret Agreement (the "Confidentiality Agreement") whereby
13 Stanley/Fenne agreed not to disclose, remove, or use any of the Debtor's proprietary technology
14 A copy of the Confidentiality Agreement is attached hereto as Exhibit "7." The Debtor is informed
15 that Stanley/Fenne is currently using the Debtor's media player on the Lazaronventures.com
16 website and intends to take action to enjoin such use. Note that the Agreement in Principal dated
17 May 6, 2000 between Stanley/Fenne and the Debtor, referred to in the Opposition, which
18 purportedly allows Stanley/Fenne to use the Debtor's media player, never became effective because
19 its conditions precedent were never satisfied. To the extent Stanley/Fenne relied on the Agreement
20 in Principal to give the Debtor any source codes, such intellectual property, as discussed above, is
21 already the Debtor's property that was illegally taken by Stanley/Fenne (see Confidentiality
22 Agreement)

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct.

25 Executed this 21 day of August 2000, at San Diego, California.

26
27 
28 Peter H. Foley

**Attorneys for Plaintiff
PIXELON, INC., a California corporation**

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

PIXELON, INC., A California corporation.

Plaintiff,) Verified Complaint for:
)

VB.

- | | |
|---|--|
| DAVID KIM STANLEY, an individual, aka ADAM MICHAEL PENNE, aka DAVID RIVERS, DAVID SNYDER, aka DAVE A. SNYDER, an individual, and DOES 1 through 500, inclusive, |) 1) Fraudulent Concealment; |
| vs. |) 2) Fraudulent |
| |) Misrepresentation; |
| |) 3) Rescission; and |
| |) 4) For Equitable Lien and to Impress Constructive Trust and for Order for Reconveyance |

Defendants.

Plaintiff PIXELON, INC. alleges as follows:

INTRODUCTORY ALLEGATIONS

1. Plaintiff, PIRELON, INC., a California corporation, (hereinafter "PIRELON") is a corporation organized under the laws of the State of California, and authorized to do business in the State of California, and is, and was, at all times material hereto,

Wagon, Boat & Furniture
 1000 10th Ave, Suite 1000
 Irvine, CA 92614

doing business in the County of Orange and within this judicial district.

2. Defendant, DAVID KIM STANLEY, who uses and/or has used the aliases, ADAM MICHAEL FENNE and DAVID RIVERS, hereinafter ("STANLEY/FENNE/RIVERS") is an individual, who was residing in the State of California, County of San Bernardino, California until his arrest on or about Wednesday, April 12, 2000 in Wise County, Virginia. STANLEY/FENNE/RIVERS was an officer, employee and member of the Board of Directors of PIXELON.

3. Defendant DAVID SNYDER, aka known as DAVE A. SNYDER, hereinafter ("SNYDER") is an individual, residing in the State of California, County of Orange, and within this judicial district.

4. On or about April 10 or 11, 2000, [redacted] a telephone conversation between STANLEY/FENNE/RIVERS, on the one hand, and Pixelon's officers or directors, Paul Ward, Stephanie Ritts and Bart Moore, STANLEY/FENNE/RIVERS verbally identified himself for the first time to Pixelon as David Stanley, whereas he had previously only used the alias Adam Michael Fenne with Pixelon. In that conversation, he stated that he relinquished, waived and gave up all rights to his stock and future monetary payments from PIXELON, under the written Severance Agreement attached hereto as Exhibit A and incorporated by this reference as though fully set forth herein.

5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 500, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities once said names have been ascertained.

6. Plaintiff is informed and believes and based thereon alleges that the fictitiously named defendants are responsible for the occurrences herein alleged, and plaintiff's damages as herein alleged, were proximately caused by the acts and omissions of each fictitiously named defendant, and each fictitiously named defendant is legally liable to plaintiff as herein alleged.

7. Plaintiff is further informed and believes and based thereon alleges that each of the fictitiously named defendants was the agent, servant, employee, representative, alter-ego of each of the remaining defendants, and, in doing the things hereinafter alleged, was acting within the course and scope of such capacity.

8. Plaintiff is further informed and believes and on that basis alleges that Defendants STANLEY/FENNE/RIVERS and DOES 1 through 500, inclusive, were co-conspirators acting in furtherance of a common plan and scheme to defraud plaintiff as set forth herein below, or acting with actual, constructive knowledge or notice thereof and with the intent to adopt, ratify and further said conspiracy by their individual acts herein alleged.

FIRST CAUSE OF ACTION

(Fraudulent Concealment and Suppression)

(Against Defendants STANLEY/FENNE/RIVERS and DOES 1-100)

9. Plaintiff hereby incorporates paragraphs 1 through 8, inclusive, of this Complaint and re-alleges same as though fully set forth herein.

10. On or about December 27, 1999, PIXELON and STANLEY/FENNE/RIVERS entered into a written Severance Agreement ("Agreement") in Orange County, California and within this judicial district. A true and correct copy of said Agreement is attached

hereto as Exhibit A and incorporated by this reference as though set forth in full herein.

11. At all times material hereto, defendants, and each of them, despite a duty to disclose such material information to plaintiff, defendants, and each of them, fraudulently, intentionally, and wantonly concealed and suppressed from plaintiff, by way of example and not limitation, the fact that Adam Michael Fenne was an alias, and that true name and identity of the individual entering into the agreement was that of David Kim Stanley. Further, defendants, and each of them, fraudulently, intentionally, and wantonly concealed and suppressed from plaintiff that David Kim Stanley had pleaded guilty to fraud charges in Virginia and Tennessee, was a fugitive from the Commonwealth of Virginia, and was under a court order to pay full restitution to his victims. Plaintiff is informed and believes and thereon alleges that defendants' concealments and suppressions, as described above, were made with the intent to induce plaintiff to enter into the Agreement, and performing under the Agreement, which included certain payments of money and stock from plaintiff to STANLEY/FENNE/RIVERS.

12. Defendants' concealment and suppression of the facts set forth herein above was deliberate, and was intended to mislead plaintiff, and did in fact mislead plaintiff into entering into and performing the Agreement with STANLEY/FENNE/RIVERS. In so performing under the Agreement, plaintiff made payments to STANLEY/FENNE/RIVERS, which were in turn used to purchase real property in Big Bear City/Erwinlake, an Bernardino County, State of California, located at 2170 Mariposa Lane, Big Bear City,

1 California, Legal Description: PTN N 662.80 FT OF E 1/2 NW 1/4 NW
2 1/4 SEC 29 TP 2. Attached hereto and incorporated by this
3 reference as Exhibit B is a true and correct copy of a letter dated
4 April 13, 2000 from David Snyder to the Law Office of Collins and
5 Collins, with a copy sent to PIXELON's Chairman of the Board, Paul
6 Ward, indicating that money under the Agreement was used to
7 purchase the aforementioned real property under name of the shell,
8 Land Dragon, Inc. which is actually entitled LANDDRAGON DEVELOPMENT
9 CORPORATION, and is controlled by individual defendant
10 PENNE/STANLEY/RIVERS. Thereafter the property was transferred
11 without proper consideration, and with the intent to defraud and
12 defraud creditors to defendant SNYDER, who is now record owner of
13 the subject property.

14 13. As a direct and proximate result of defendants' conduct,
15 plaintiff has suffered damages in a sum of no less than \$266,000,
16 plus loss of goodwill, reputation and business.

17 14. The aforementioned acts of defendants, and each of them,
18 were willful, oppressive, fraudulent and malicious; therefore
19 plaintiff is entitled to punitive damages.

20
21 SECOND CAUSE OF ACTION
22 (Fraudulent Misrepresentation)

23 (Against Defendants STANLEY/PENNE/RIVERS and DOES 1-100)

24 15. Plaintiff hereby incorporates paragraphs 1 through 14,
25 inclusive, of this Complaint and re-alleges same as though fully
26 set forth herein to the extent consistent with this Cause of
27 Action.
28

Ward, David & Paul
Law Office of Collins
and Collins
Law Firm

1 16. In entering into the Agreement, defendants represented
2 that the identity of the person entering into the Agreement with
3 PIXELON was Michael Penne.
4 17. Plaintiff is informed and believes and thereon alleges
5 that defendants' representation to plaintiff as described in the
6 preceding paragraph was made with the intent to induce plaintiff to
7 enter into and perform the Agreement.

8 18. Plaintiff is informed and believes and thereon alleges
9 that at the time defendants made such representation and entered
10 into the Agreement, defendants made such representation knowing it
11 to be false with intent to defraud and deceive plaintiff and to
12 induce plaintiff to act in the manner alleged herein.

13 19. In reliance on the representation of defendants as
14 described herein, plaintiff entered into the Agreement and
15 performed all acts required by it to be performed under the
16 Agreement.

17 20. Had plaintiff known the true facts, that Penne was merely
18 an alias and that the true identity of the individual they were
19 entering into said contract with was David Kim Stanley, and that
20 such individual was a convicted felon and fugitive they would have
21 never entered into the Agreement, nor performed under it, by making
22 payments to PENNE/RIVERS.

23 21. As a direct and proximate result of the acts of
24 defendants, plaintiff has suffered damages in amounts according to
25 proof, but in a sum no less than \$266,000.00.

26 22. The aforementioned acts of defendants, and each of them,
27 were willful, oppressive, fraudulent and malicious; therefore
28 plaintiff is entitled to punitive damages.

Ward, David & Paul
Law Office of Collins
and Collins
Law Firm

THIRD CAUSE OF ACTION

(Rescission)

(Against All Defendants)

23. Plaintiff incorporates herein by reference paragraphs 1 through 22, inclusive, of this Complaint and re-alleges same as though fully set forth herein to the extent consistent with this Cause of Action.

24. Plaintiff intends service of the summons and complaint in this action to serve as notice of rescission of the Agreement, and hereby offers to restore all consideration furnished by defendant STANLEY/PENNE/RIVERS under the Agreement, on condition that all defendants restore to Plaintiff the consideration furnished by Plaintiff, as set forth in the Agreement, plus the real property that defendants purchased with the proceeds of the agreement, including but not limited to any appreciation in said property since purchase thereof.

25. As a result of entering into the written Agreement with defendants, Plaintiff has incurred and will continue to incur additional expenses as a result of entering into the Agreement, according to proof at the time of trial. Plaintiff prays leave to and this Complaint to insert the true amount of those expenses when they are ascertained.

FOURTH CAUSE OF ACTION

(For Equitable Lien, And To Impress

Constructive Trust And For

Order For Reconveyance)

(Against All Defendants)

26. Plaintiff incorporates herein by reference paragraphs 1 through 25, inclusive, of this Complaint and re-alleges same as though fully set forth herein to the extent consistent with this Cause of Action.

27. Due to the circumstances as herein alleged, Defendant SNYDER is holding title to the property located at located at 2170 Mariposa Lane, Big Bear City, California, Legal Description: PTN N 662.80 FT OR E 1/2 NW 1/4 NW 1/4 SEC 29 TP 2. In a constructive trust for the benefit of Plaintiff PIXELON.

28. Plaintiff is informed and believes that Defendant SNYDER and DOES 1-100 has or will sell transfer or assign the property for the benefit of defendants and each of them and to the detriment of Plaintiff PIXELON. Plaintiff is informed and believes that Defendant SNYDER and DOES 1-100 has or will take the proceeds from the sale of the property and invest same in real or personal property, and other tangible and intangible items and assets, or otherwise dissipate it in hindrance of creditors, including Plaintiff PIXELON.

29. Plaintiff is informed and believes that while Defendants, or their agents, representatives, or affiliates, have held the title to property and its proceeds they have received benefits therefrom in an amount unknown to Plaintiff. Defendants should be required to account fully for all proceeds and profits.

30. By reason of the fraudulent manner in which defendants retained the subject property and/or its proceeds, Defendants are involuntary trustees holding the real and personal property and profits therefrom in a constructive trust for Plaintiff with the duty to reconvey the same to Plaintiff PIXELON forthwith.

EXHIBIT

PAGE 24

EXHIBIT

PAGE 25

1
2
3 WHEREFORE, Plaintiff prays for judgment against Defendants as
4 follows:
5 1. For an order barring STANLEY/FENNE/RIVERS, and SNYDER,
6 their agents, employees, representatives, and attorneys from any
7 conveyance or encumbrance of any real property, without prior
8 consent of the Court;
9 2. For an order barring STANLEY/FENNE/RIVERS, and SNYDER,
10 and their agents, employees, representatives and attorneys from
11 disposing of any assets, including cash, other than in the ordinary
12 course of business and for value, without the prior consent of the
13 Court;
14 3. For an order barring STANLEY/FENNE/RIVERS, and SNYDER,
15 and their agents, employees and attorneys from removing any money
16 or property from the United States without the prior consent of the
17 Court;
18 4. For an order that plaintiff be permitted to file a lis
19 pendens against all real property standing in the name of Defendant
20 STANLEY/FENNE/RIVERS, SNYDER, and Landragon Development Corp. as of
21 the date this action was first filed, and as to any transferred
22 thereof for less than value after said date.
23 5. For an order requiring Defendant STANLEY/FENNE/RIVERS to
24 account for and deposit with the Clerk of the Court all sums of
25 money received by him directly or indirectly from PIXELON, INC.
26 from the execution of the Severance Agreement with PIXELON,
27 Decedent, the present.
28

EXHIBIT 1
PAGE 26

1 6. That an order be made declaring the real property located
2 at 2170 Mariposa Lane, Big Bear City, California 92314, legal
3 description: PTN N 662.80 FT OF E 1/2 NW 1/4 NW 1/4 SEC 29 TP 2,
4 personal property and cash, and any other asset or proceeds
5 therefrom, which were purchased with the money paid under the
6 severance agreement, be held in trust for plaintiff, and/or
7 equitable liens be established thereon to the extent wrongfully
8 obtained funds from plaintiff were used therefor, for reconveyance
9 of the subject real property to plaintiff PIXELON, for foreclosure
10 of said lien, for an order requiring the assets to be sold for the
11 payment of the lien, and for payment of the amount of the lien from
12 the proceeds from the sale.
13 7. On All Causes of Action, compensatory damages in a sum no
14 less than \$266,000.00.
15 8. On the Third Cause of Action, that defendant be ordered
16 to pay plaintiff the consideration paid by plaintiff for the
17 Agreement, plus interest at the legal rate from December 27, 1999
18 to the date of rescission, and the sums paid, or which will be paid
19 by plaintiff pursuant to the Agreement with interest thereon at the
20 legal rate from December 27, 1999 to the date of rescission.
21 9. On All Causes of Action, punitive damages.
22 10. For costs incurred herein, including attorney's fees.
23 11. For prejudgment interest.
24 12. For such other and further relief as the Court deems just
25 and proper.
26 DATED: May 17, 2000 WOOD, BOHM & FRANCIS, LLP
27
28

By _____

EXHIBIT 1
PAGE 27

VERIFICATION

I have read the foregoing Verified Complaint for: Fraudulent
Concealment; Fraudulent Misrepresentation; Rescission; and For
Equitable Lien. And To Impress Constructive Trust And For Order For
Reconveyance, and know its contents.

I am the Chairman of the Board of Pixelon, Inc., which is the
Plaintiff in this action. The matters stated in the foregoing
document are true of my own knowledge.

Executed on this May 17, 2000, at San Juan Capistrano,
California.

I declare under penalty of perjury under the laws of the
State of California that the foregoing is true and correct.



Paul C. Ward, Jr.

EXHIBIT 3
PAGE 39

STATUS OF PDKELON'S PATENT APPLICATIONS
AS OF FEBRUARY 7, 2000

MATTER NO.	TITLE	SERIAL NO.	FILING DATE	ASSIGNMENT TO PDKELON FILED	STATUS
17954-11	FREQUENCY-BASED VIDEO DATA SUBSTITUTION FOR INCREASED VIDEO COMPRESSION RATIOS	09/351,618	July 12, 1999	Yes	Waiting examination
17954-12	MATCHING OF A REDUCED SPECTRUM LIGHTING SOURCE WITH VIDEO ENCODING PROGRAM VARIABLES FOR INCREASED DATA COMPRESSION RATIOS	09/351,028	July 12, 1999	Yes	Waiting examination
17954-13	INTERNET BROADCASTING SYSTEM UTILIZING CACHED AND ENCRYPTED MULTIMEDIA CONTENT	09/428,413	Oct. 28, 1999	Yes	Waiting examination
17954-14	INSTANTANEOUS VIEWER RESPONSE SYSTEM AND METHOD FOR INTERNET BROADCASTING	09/428,394	Oct. 28, 1999	Yes	Waiting examination
17954-15	DYNAMIC INSERTION OF TARGETED SPONSORED VIDEO MESSAGES INTO MULTIMEDIA INTERNET BROADCASTS	09/428,387	Oct. 28, 1999	Yes	Waiting examination
17954-19	INTERNET BROADCAST SYSTEM	09/429,363	Oct. 28, 1999	Yes	Waiting examination
17954-21	REVERSE SPECTRAL RESPONSE COMPENSATION OF A VIDEO SIGNAL	09/428,392	Oct. 28, 1999	Yes	Waiting examination
17954-22	MATCHING OF A REDUCED SPECTRUM LIGHTING SOURCE WITH VIDEO ENCODING PROGRAM VARIABLES FOR INCREASED DATA COMPRESSION RATIOS	09/428,395	Oct. 28, 1999	Yes	Waiting examination
17954-23	FREQUENCY-BASED VIDEO DATA SUBSTITUTION FOR INCREASED VIDEO COMPRESSION RATIOS	09/428,396	Oct. 28, 1999	Yes	Waiting examination

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Employer's name, address, and ZIP code PIXELION INC 31634 RANCHO VIEJO RD STE B SAN JUAN CAPISTRANO CA 92675		Employer's federal tax identification number 33-0800713	
CA 441-6464-8	Employer's state ID no. 85904.58	Employer's state unemployment insurance tax rate 5219.11	Employer's state disability insurance tax rate 7.500.
Employee's name, address, and ZIP code TROY KISKY 525 BERRY ST MAYVARD CA 94544		Employee's social security number 493-84-3994	Employee's state ID no. 158.84
Employer's federal tax identification number 33-0800713		Employer's state unemployment insurance tax rate 5219.11	Employer's state disability insurance tax rate 7.500.
Employee's name, address, and ZIP code TROY KISKY 525 BERRY ST MAYVARD CA 94544		Employee's social security number 493-84-3994	Employee's state ID no. 158.84
Employer's federal tax identification number 33-0800713		Employer's state unemployment insurance tax rate 5219.11	Employer's state disability insurance tax rate 7.500.

Form W-2 Wage and Tax Statement 1998 EMPLOYER REFERENCE COPY - DO NOT FILE

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Employer's federal tax identification number 33-0800713		Employer's state unemployment insurance tax rate 5219.11	Employer's state disability insurance tax rate 7.500.

15 Name, street address, city, state, ZIP code, and telephone no. PIVELION, COM 31732 RANCHO VIEJO RD. SUITE "D" SAN JUAN, CAP., CA 92675 949-248-4655		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED
11-12 Recipient's name LOCO LOCO LABS Street address (including apt. no.) 1347 THE ALAMEDA, # 7 City, state, and ZIP code SAN JOSE, CA 95126 Account number (optional)		13 Recipient's identification number 77-0426289
1 First name 2 Surname 3 Address 4 Other income 5	6 Federal income tax withheld 7 Filing boat proceeds 8	9 Medical and health care payments 10 Scholarships payments to beneficiary for education 11 Charitable contributions 12 Crop insurance proceeds 13 Spouse's or partner's state number 14
15 Form 1099-MISC 16		17 Nonemployee compensation 18
19 Copy C For Payees For Privacy Act and Paperwork Reduction Act Notice and instructions for completing this form 1989 Instructions for Forms 1099-MISC, 1098, 1099, 5498, and W-200		20

[illegible]

PAYER'S name, street address, city, state, ZIP code, and telephone no. PIXELON, COM 31732 RANCHO VIEJO RD. SUITE "D" SAN JUAN CAP., CA 92675 949-248-4655		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED	
PAYER'S Federal identification number 33-0800713		RECEIPT'S identification number 102-48-7861	
PATRICIA MODICA		1999	
Street address (including apt. no.) 360 LILLY POND ROAD City, state, and ZIP code DARKVILLE, NY 13268		Quid No. 1545-0115	
1 Name 2 Payee(s) 3 Other income 4 Federal income tax withheld 5 Paying Social Security 6 Medical and health care payments 7 Charitable payments to tax-exempt religious or funeral 8 Crop insurance proceeds 9 State income tax withheld		10 1099-MISC 11 State income tax withheld	
12 State/Payer's state number 13		14	
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ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS AGREEMENT

This Assignment is made and entered into on July 14, 1999, by and between Assignor, ADAM MICHAEL FENNE ("FENNE") and Assignee, PIXELON, Inc. ("PIXELON"), a California corporation, with its principal place of business at 31726 Rancho Viejo Road, Suite 121, San Juan Capistrano, California 92675 regarding intellectual property rights of FENNE under the following terms and conditions:

1. INTENT OF ASSIGNMENT

1.1. For full and valuable consideration, receipt of which is hereby acknowledged, FENNE hereby sells, transfers and assigns to PIXELON all of FENNE's right, title and interest in its inventions since January 1, 1997.

2. DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

2.1. "Inventions" means all discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, techniques, and technical data (whether or not patentable or registrable under patent, copyright or similar statutes and including all rights to obtain, register, perfect, and enforce those proprietary interests) that are related to or useful in the Company's present or future business or result from use of property owned, leased or contracted for by the Company. "Inventions" shall also include anything that derives actual or potential economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use.

2.2. "Proprietary Information" means information (a) that is not known by actual or potential competitors of PIXELON or is generally unavailable to the public, (b) that has been created, discovered, developed or otherwise become known to PIXELON or in which property rights have been assigned or otherwise conveyed to PIXELON and (c) that has material economic value or potential material economic value to PIXELON's present or future business. "Proprietary Information" shall include trade secrets (as defined under California Civil Code section 3426.1(d) and all other discoveries, developments, designs, improvements, inventions, formulas, software programs, processes, techniques, know-how, negative know-how, data, research, techniques, technical data, customer and supplier lists, and any modifications or enhancements of any of the foregoing, and all program, marketing, sales, or other financial or business information disclosed to PIXELON by FENNE, whether directly or indirectly in writing or orally or by drawings or observation, which has actual or potential economic value.

2.3. "Rights" means all patents, trademarks, service marks and copyrights and other rights pertaining to Proprietary Information, Inventions, or both.

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3. INVENTION ASSIGNMENT

3.1. All Proprietary Information and Inventions developed by FENNE from January 1, 1997 through the completion of FENNE's relationship to Pixelon, except those listed in Exhibit "B", shall be the sole property of PIXELON and PIXELON shall be the sole owner of all rights.

3.2. FENNE assigns to PIXELON all rights that FENNE may have or acquire and any other rights that he may have or acquire pertaining to Proprietary Information and Inventions.

4. PROPERTY RIGHT REGISTRATIONS

4.1. FENNE shall assist PIXELON or any person designated by it in every proper way (but at PIXELON's expense) to obtain and from time to time to enforce the Rights including registrations and applications for patents, copyrights, or other intellectual property rights in any and all countries.

4.2. Exception to Assignment of Inventions: Any provision in the Agreement requiring FENNE to assign his rights in all inventions shall not apply to an invention that qualifies fully under the provisions of California Labor Code § 2870, the terms of which are set forth on Exhibit "A" to this Agreement.

4.3. FENNE has listed in Exhibit "B" all inventions or improvements relevant to the subject matter or Employment that have been made or conceived of or first reduced to practice by him alone or jointly with others before January 1, 1997 and that are excluded from the operation of this Agreement.

5. REPRESENTATIONS AND WARRANTIES

FENNE warrants and represents that the following statements are true to FENNE's knowledge and belief:

(a) This Assignment is exclusive and made solely to PIXELON. The inventions have not been sold or assigned to any other party, except if notice of other assignment has been given to PIXELON, prior to the execution of this Assignment, specifically describing the other assignment:

6. EFFECT ON HEIRS AND SUCCESSORS

6.1. This Assignment and each of its provisions shall be binding on and shall inure to the benefit of the respective heirs, devisees, legatees, executors, administrators, trustees, successors and assigns of the parties to this Assignment.

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7. AMENDMENTS TO ASSIGNMENT

7.1 This Assignment may be amended only by a writing signed by the party against whom or against whose successors and assigns enforcement of the change is sought.

8. EFFECT OF PARTIAL INVALIDITY

8.1 If any term or provision of this Assignment or any application thereof shall be held invalid or unenforceable, the remainder of this Assignment and any application of the terms and provisions shall not be affected thereby, but shall remain valid and enforceable.

9. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

10. ATTORNEY'S FEES

In any action arising from the alleged breach of this Agreement, or to enforce this Agreement, the final prevailing party will recover its reasonable attorney's fees, costs, expenses, and any injunction prohibiting such wrongful conduct from engaging in said manner, or specifically enforcing the terms of this Agreement, as the case may be. Any litigation concerning this agreement shall be venue in Orange County, California.

11. FAILURE TO OBJECT

The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement, shall not be construed as a waiver of that conduct or any future breach or subsequent wrongful conduct.

12. VALIDITY OF PROVISIONS

If any part, term or provision of this Agreement is declared and determined by any court or arbitrator to be illegal or invalid, such declaration and determination shall not effect the validity of the remaining parts, terms or provisions. Any illegal or invalid part, term or revision shall be deemed not a part of this Agreement.

13. REPRESENTATION

All parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties and therefore any ambiguity or uncertainty shall be interpreted accordingly.

14. COUNTER-PARTS

This Agreement may be executed in two or more counter-parts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

15. NOTICE

All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery, or through the facilities of the United States Postal Service, certified and return receipt requested.

16. HEADINGS

The various headings in this Agreement are inserted for convenience only and shall not affect this Agreement or any portion thereof.

NOW THEREFORE, for full and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, FENNE hereby assigns, transfers and conveys to PIXELON all of FENNE's right, title, and interest in all Inventions, Proprietary Information and Rights developed during the period January 1, 1997 through the completion of FENNE's relationship with PIXELON, with the exception of those listed in Exhibit "B" and made a part hereof. This Assignment may be executed in multiple counterparts, each of which shall constitute an original, and together shall constitute one and the same agreement.

The parties have executed this Agreement on the dates indicated opposite their signatures.

DATED:

7/14/99

PIXELON, INC.

By: *[Signature]*

By: *[Signature]*

ADAM MICHAEL FENNE

ADAM MICHAEL FENNE

DATED:

7/14/99

By: *[Signature]*

ADAM MICHAEL FENNE

EXHIBIT A

CALIFORNIA LABOR CODE SECTION 2870

Section 2870 of the California Labor Code provides as follows:

(a) Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

- (1) Relate at the time of conception or reduction to practice of the invention to the employer's business or actual or demonstrably anticipated research or development of the employer; or
- (2) Result from any work performed by the employee for the employer.
- (3) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

EXHIBIT B

EXISTING INVENTIONS AND IMPROVEMENTS

The following is a list of all inventions or improvements relevant to the subject matter of Employment by PIXELON that have been made or conceived of or first reduced to practice by FENNE, alone or jointly with others before Employment by PIXELON:

- 1.
- 2.
- 3.
- 4.

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SEVERANCE AGREEMENT

THIS SEVERANCE AGREEMENT (the "Agreement") is made as of this 27th day of December 1999, by and between Pixton, Inc., a California corporation (the "Company"), and Adam Michael Fenne ("Fenne").

RECITALS:

- A. The Company is primarily engaged in the business of developing and operating an Internet broadcasting network;
- B. Fenne is the founder of the Company and has agreed to resign as an officer, employee and member of the Board of Directors of the Company;
- C. The Company wishes to accept Fenne's resignation; and
- D. As a condition of the Company entering into this Agreement with Fenne and executing a general release in favor of Fenne, Fenne has agreed to restrict his ability to enter into competition with the Company and to execute a general release in favor of the Company.

NOW, THEREFORE, in consideration of the foregoing and the agreements, covenants and conditions set forth herein, Fenne and the Company hereby agree as follows:

ARTICLE I

SEVERANCE BENEFITS

1.1 Purchase of Shares:

1.1.1 Fenne represents, warrants and covenants to the Company that he owns 3,000,000 shares of the Company's common stock free and clear of all liens and encumbrances. For aggregate consideration of six hundred and sixty thousand dollars (\$660,000), the Company shall purchase the following from Fenne: (i) 2,000,000 of the 3,000,000 shares of common stock owned by Fenne; and (ii) any right, title or interest Fenne may have in any capital stock, warrants, options or other securities of the Company other than the 1,000,000 shares of the Company's common stock which Fenne will continue to own after the purchase described in this Section 1.1.1. Such securities shall include, but not limited to, an option to purchase four million one hundred thousand (4,100,000) shares of the Company's common stock and a warrant previously issued to Fenne under which Fenne was entitled to purchase three million (3,000,000) shares of the Company's Common Stock at a price of \$4.50 per share, exercisable once the Company has been a public company for one year and has maintained an average share price of \$15.00 for one year for. Upon

execution of this Agreement Fenne shall deliver to the Company 2,000,000 shares of common stock and cause title to such shares to transfer to the Company. In addition, Fenne shall deliver any documents reflecting ownership in any options or warrants granted to Fenne by the Company.

1.1.2 Fenne acknowledges that he has previously received nine thousand dollars (\$9,000) of the \$660,000 purchase price described in Section 1.1.1, in cash, from the Company, and that the payment for the securities to be purchased pursuant to Section 1.1.1 shall be reduced by this \$9,000. The payments to be made by the Company to Fenne for the purchase of the securities described in Section 1.1.1 above shall be further reduced by fifty seven thousand four hundred and ninety-three dollars (\$57,493), which represents the amount owed by Fenne to the Company for payment of personal expenses, including rent to be paid by the Company on Fenne's apartment for the month of January 2000.

1.1.3 The Company shall make payments totaling \$593,507 to Fenne, representing the \$660,000 consideration for the purchase of Fenne's securities pursuant to Section 1.1.1 above, reduced by the \$9,000 previously paid by the Company to Fenne and the \$57,493 owed by Fenne to the Company for the payment of personal expenses described in Section 1.1.1 above. The Company shall make such payments according to the following schedule:

- (a) Two hundred and sixty-six thousand dollars (\$266,000) on December 27, 1999;
- (b) Fifteen thousand dollars (\$15,000) per month, to be paid on the 15th of each month from January 2000 to September 2001, inclusive;
- (c) Twelve thousand, five hundred and seven dollars (\$12,507) on October 15, 2001.

Provided, however, that the payments described above are expressly conditioned on Fenne's full compliance with the terms of this Agreement. Fenne shall forfeit any right to such payments if he commits any material breach of this Agreement, but the Company shall retain all right, title and interest in the 2,000,000 shares conveyed transferred to the Company pursuant to Section 1.1.1 above notwithstanding Fenne's forfeiture of his right to any or all of such payments.

1.2 Return of Equipment. The Company agrees to return to Fenne certain audio equipment which was maintained in Fenne's office at the Company and which was purchased by Fenne prior to the formation of the Company, including a Neuman microphone and JBL speakers.

1.3 Severance Agreement with David Snyder. The Company shall enter into a severance agreement with David Snyder under which Mr. Snyder receives a severance payment of ten thousand dollars (\$10,000) per month for six months, with payments to begin on November 30, 1999 and to be made semi-monthly and the Company agrees to pay up to fifteen thousand dollars (\$15,000) in verifiable business expenses relating to the Company incurred by Mr. Snyder.

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1.4 Payment. Any severance benefits paid under this Agreement shall be subject to such withholdings and deductions by the Company as are required by law.

ARTICLE II

FENNE'S OBLIGATIONS

2.1 Resignation. Upon execution of this Agreement, the Company accepts Fenne's resignation as a member of the Company's board of directors and as the Chief Technology Officer and an employee of the Company, effective as of December 16, 1999, the date Fenne submitted his resignation to the Company.

2.2 Assignment of Leases. Fenne agrees to accept an assignment from the Company of the leases, including any and all liabilities thereunder, on Fenne's personal residence and the Lincoln Navigator used by Fenne, effective January 1, 2000. Fenne shall, if necessary to effectuate the assignment of such leases and/or the release of the Company from any and all obligations thereunder, grant to the lessors a security interest in Fenne's right to the payments described in Section 1.1.1 above. If the lessor of either such lease will not permit the Company to full assign its rights and obligations under a lease to Fenne, the Company shall deduct the total remaining monetary obligations owed by the Company under the lease or leases which cannot be assigned from the payments to Fenne described in Section 1.1.1 above. Such deductions shall be made from the payments in the order they come due until the total remaining monetary obligations under such lease or leases have been deducted.

2.3 Agreement with Troy Kisky. Fenne will use his best efforts to assist the Company in entering into a consulting agreement with Troy Kisky with a term of three years under which Mr. Kisky provides consulting services with regard to the Pixelon Player in consideration for payment of \$10,000 per month for twenty (20) hours per week of consulting services, and two hundred and fifty dollars (\$250) per hour for services provided in excess of twenty hours per week. Fenne shall also use his reasonable efforts to facilitate communications between Kisky and the Company and to ensure that Kisky fully performs the consulting services pursuant to the consulting agreement.

2.4 Cooperation with Company. For a period of three (3) years from the date of this Agreement, Fenne shall provide his full cooperation to the Company in connection with the development or maintenance of the Company's technology, and shall make himself reasonably available by telephone to respond to inquiries by the Company or its officers, employees or agents relating to such technology, provided, however, that Fenne shall not be obligated to expend more than twenty (20) hours in any one calendar month in responding to such inquiries.

2.5 Prohibited Activities. Fenne acknowledges that upon execution of this Agreement he will not be an employee, representative or agent of the Company for any purpose. Fenne acknowledges that upon execution of this Agreement he will have no authority to engage in, and will

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not attempt to engage in, any activities on behalf of the Company, including but not limited to the following:

- (a) hiring or firing employees or independent contractors, including employees or independent contractors providing temporary services;
- (b) entering into any contracts, whether oral or written, on behalf of any; or
- (c) communicating with third parties on behalf of the Company.

In addition, beginning on the date of this Agreement Fenne agrees not to contact, by telephone, e-mail, in person, in writing, or any other means, any employees or directors of the Company other than Brian MacDonald, Bart Moore or Paul Ward, provided, however, that Fenne may communicate with employees or directors of the Company other than Brian MacDonald, Bart Moore or Paul Ward if such communications are not initiated by Fenne.

2.6 Lock-up. In the event that the Company shall make a public offering of the Company's Common Stock, Fenne, on behalf of Fenne and any successor in interest to any shares of the Company's capital stock owned by Fenne, agrees that such shares shall not be sold or otherwise transferred by Fenne or by any successor in interest of Fenne for a period of three hundred and sixty (360) days from the date of the initial closing of such public offering, unless waived by the Company. The certificates for the Shares issuable hereunder shall contain the following restrictive legends:

"These securities have not been registered under the Securities Act of 1933. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel satisfactory to the Company that such registration statement is not required or unless sold pursuant to Rule 144 of such Act.

The shares represented by this certificate shall not be transferable for a period of three hundred and sixty (360) days following the initial closing of an initial public offering of the Company's common stock unless such restriction is waived in writing and delivered to the Company's transfer agent by the Company."

2.7 Delivery of Communications and Agreements. Upon execution of this Agreement Fenne shall deliver to the Company any and all e-mail, correspondence or other communications of or pertaining to the Company or any of its officers, directors, employees, or any third parties with which it has done business sent or received by Fenne at any time from January 1, 1997 to November 13, 1999, regardless of the medium upon which it is stored, including, but not limited to, all e-mails sent or received by Fenne at the Company's offices, provided, however, that Fenne shall be obligated to deliver e-mail, correspondence or other communications which are strictly personal in nature and which do not relate in any way to the Company, its officers, directors, employees or any parties with which it has done or sought to do business.

2.8 Assignment of Rights to Domain Names and URLs. Fenne hereby assigns to the Company any rights, title and interest he may have in any domain name, Internet address, uniform resource locator, or other name or identifier of any type whatsoever relating to an Internet website or other location on the Internet relating to the Company, including but not limited to "Pixelon.com" and "Pixelon.net," provided, however, that Fenne may retain any rights he has in the domain name "lazarionventures.com."

2.9 Provision of Information. Fenne shall provide all information required by the Company to comply with any and all regulatory obligations to which it may be subject. Fenne shall provide the Company with all information required under this Section 2.9 within five (5) days of a request by the Company for such information. However, should Fenne be unable to provide such information within the time specified, he shall notify the Company in writing within five business days and shall specify the reasons why he is unable to provide the information. *ARTICLE III OF THIS AGREEMENT*

CONFIDENTIALITY AND NON-COMPETE AGREEMENT

3.1 Non-Disclosure of Confidential Information. Fenne hereby acknowledges and agrees that the duties and services to be performed by Fenne under this Agreement are special and unique and that as a result of his prior employment by the Company and by his retention hereunder, Fenne has and will acquire, develop and use information of a special and unique nature and value that is not generally known to the public or to the Company's industry, including but not limited to, certain records, secrets, documentation, software programs, source codes, technological information or innovations (including but not limited to any of the Company's intellectual property, know-how, price lists, ledgers and general information, employee records, mailing lists, customer lists, customer profiles, prospective customer lists, accounts receivable and payable ledgers, financial and other records of the Company or its affiliates, information regarding its customers or principals, and other similar matters (all such information being hereinafter referred to as "Confidential Information"). Fenne further acknowledges and agrees that the Confidential Information is of great value to the Company and its affiliates and that the restrictions and agreements contained in this Agreement are reasonably necessary to protect the Confidential Information and the goodwill of the Company. Accordingly, Fenne hereby agrees that:

3.1.1 Fenne will not, at any time, directly or indirectly, except as authorized by the Company for the benefit of the Company, divulge to any person, firm, corporation, limited liability company, or organization, other than the Company (hereinafter referred to as "Third Parties"), or use or cause or authorize any Third Parties to use, the Confidential Information, except as required by law; and

3.1.2 Upon the execution of this Agreement, Fenne shall deliver or cause to be delivered to the Company any and all Confidential Information, including drawings, notebooks, keys, data and other documents and materials belonging to the Company or its affiliates which is in his possession or under his control relating to the Company or its affiliates, or the Business of the Company (as defined herein), regardless of the medium upon

which it is stored, or any other property of the Company or its affiliates which is in his possession or under his control, including, but not limited to, the source code for the Pixelon Player. Femme recognizes that the unauthorized taking of any of the Company's trade secrets is a crime under Section 499(c) of the California Penal Code, and is punishable by imprisonment in a state prison or in a county jail for a time not exceeding one year, or by a fine not exceeding five thousand dollars (\$5,000), or both such fine and imprisonment. Femme further recognizes that such unauthorized taking of the Company's trade secrets may also result in civil liability under the Uniform Trade Secrets Act, California Civil Code Section 3426, et seq., and that a willful taking may result in an injunction and an award against Femme for the Company's attorney's fees and triple the amount of the Company's damages.

3.2 Restrictive Covenants.

3.2.1 Non-Competition Covenant. Femme acknowledges that the covenants set forth in this Section 3.2 are reasonable in scope and essential to the preservation of the Business of the Company. Femme also acknowledges that he will be able to remain gainfully employed in such manner and to the extent as to provide a standard of living for himself, the members of his family and the others dependent upon him of at least the level to which he and they have become accustomed and may expect, notwithstanding the enforcement of the covenant set forth in this Section 3.2.1. In addition, Femme acknowledges that the Company has obtained an advantage over its competitors as a result of its name, location and reputation that is characterized by near permanent relationships with customers, principals and other contacts which it has developed at great expense. Furthermore, Femme acknowledges that competition by him following the termination of his employment with the Company would impair the operation of the Company beyond that which would arise from the competition of an unrelated third party with similar skills. Femme hereby agrees that he shall not, for a period of two (2) years from the date of this Agreement, directly or indirectly, engage in or become directly or indirectly interested in any proprietorship, partnership, firm, trust, company, limited liability company or other entity, other than the Company (whether as owner, partner, trustee, beneficiary, stockholder, member, officer, director, employee, independent contractor, agent, servant, consultant, lessor, lessee or otherwise) that competes with the Company in the Business of the Company in the Restricted Territory (as each term is defined herein), other than an interest in a company listed on a recognized stock exchange in an amount which does not exceed five percent (5%) of the outstanding stock of such corporation, except that Femme may engage in his current business of building an Internet satellite distribution network. For purposes of this Agreement, (i) the term "Business of the Company" shall include all business activities and ventures related to the development or use of technology for the transmission of audio and video content over the Internet, and the broadcasting of audio and video content over the Internet; and (ii) the term "Restricted Territory" means the United States of America and the continent of North America.

3.2.2 Non-Solicitation Covenant. Femme hereby covenants and agrees that for a period of two (2) years from the date of this Agreement, he shall not (i) solicit for the purpose of developing technology used for the transmission of audio and video content over the Internet or for the broadcasting of audio or video content over the Internet, or endeavor to entice away from the Company any person, firm, corporation, limited liability company or other entity that was a customer of the Company at any time prior to the date of this Agreement or within the two-year period following the date of this Agreement, or (ii) induce, attempt to induce or hire any employee of the Company, other than Troy Kisky, to leave the employ of the Company, or in any way interfere with the relationship between any such employee and the Company.

3.3 Remedies.

3.3.1 Injunctive Relief. Femme expressly acknowledges and agrees that the Business of the Company is highly competitive and that a violation of any of the provisions of Sections 3.1 or 3.2 would cause immediate and irreparable harm, loss and damage to the Company not adequately compensable by a monetary award. Femme further acknowledges and agrees that the time periods and territorial areas provided for herein are the minimum necessary to adequately protect the Business of the Company, the enjoyment of the Confidential Information, and the goodwill of the Company. Without limiting any of the other remedies available to the Company at law or in equity, or the Company's right or ability to collect money damages, Femme agrees that any actual or threatened violation of any of the provisions of Sections 3.1 or 3.2 may be immediately restrained or enjoined by any court of competent jurisdiction, and that a temporary restraining order or emergency, preliminary or final injunction may be issued in any court of competent jurisdiction, upon twenty-four (24) hour notice and without bond. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this Section shall survive the termination of this Agreement.

3.3.2 Enforcement. It is the desire of the parties that the provisions of Sections 3.1 or 3.2 be enforced to the fullest extent permissible under the laws and public policies in each jurisdiction in which enforcement might be sought. Accordingly, if any particular portion of Sections 3.1 or 3.2 shall ever be adjudicated as invalid or unenforceable, or if the application thereof to any party or circumstance shall be adjudicated to be prohibited by or invalidated by such laws or public policies, such section or sections shall be (i) deemed amended to delete therefrom such portions so adjudicated or (ii) modified as determined appropriate by such a court, such deletions or modifications to apply only with respect to the operation of such section or sections in the particular jurisdictions so adjudicating on the parties and under the circumstances as to which so adjudicated.

ARTICLE IV

PROPRIETARY INFORMATION

4.1 **Definitions.** As used in this Agreement, the term "Proprietary Information" means information that has been created, discovered, developed or otherwise become known to the Company (including without limitation information created, discovered, developed or made known by Fenne from the period of January 1, 1997 through the date of this Agreement) and/or in which property rights have been assigned or otherwise conveyed to the Company, which information has commercial value in the Company's Business. By way of illustration, but not limitation, Proprietary Information includes trade secrets, processes, formulas, data and know-how, improvements, inventions, techniques, marketing plans, pricing of products, strategies, forecasts, customer lists and identity of suppliers of research or production services, including development of building blocks.

As used in this Agreement, the term "Inventions" shall mean all improvements, inventions, formulas, processes, techniques, know-how and data, whether or not patentable, made or conceived or reduced to practice or learned by Fenne, either alone or jointly with others, during the period of January 1, 1997 to the date of this Agreement which are related to or useful in the Business of the Company, or result from tasks performed by Fenne for the Company or which result from use or premises owned, leased or contracted for by the Company.

4.2 **Assignment of Rights to Proprietary Information and Inventions.** Subject to Section 4.4 below, all Proprietary Information and Inventions shall be the sole property of the Company and its assigns, and the Company and its assigns shall be the sole owner of all patents and other rights in connection therewith. Fenne hereby assigns to the Company any and all rights, title and interest he may have or acquire in such Proprietary Information and Inventions.

4.3 **Cooperation with Patent Applications.** Fenne agrees to, at the request of the Company, execute any and all applications for letters patent for any Inventions which were invented in whole or in part by Fenne, and for which applications are pending or have been filed on the Company's behalf, or which were invented during the time period of January 1, 1997 to the date of this Agreement and which relate to the Company's Business but for which applications have not been filed, and to execute any and all other papers and documents and do all other and further lawful acts that the Company may deem necessary or desirable to obtain letters patent on the Inventions, to secure the grant of such letters patent and to perfect and vest in the Company the entire right, title and interest in the Inventions, applications and letters patent.

Fenne agrees to execute such documents as the Company may deem necessary or appropriate to add and/or delete named inventor(s) to/from the patent applications which have been filed in the Company's name and which name Fenne as an inventor, in order to reflect the correct ownership and inventions of those patent applications as defined under the applicable laws in the opinion of the Company's patent counsel.

Fenne's obligation to assist the Company in obtaining and enforcing patents for Inventions in any and all countries is independent of his employment with or ownership in the Company, and shall continue for a period of fifteen (15) years from the date of this Agreement.

4.4 **California Labor Code.** The Company's right with regard to certain things invented or co-invented by Fenne are subject to Sections 2870-2877 of the California Labor Code, under which Fenne has no obligation to assign rights in an invention for which no equipment, supplies, facilities or trade secret information of the Company was used and which was developed entirely on Fenne's own time, and (e) which does not relate (1) to the business of the Company or (2) to the Company's actual or demonstrably anticipated research or development, or (b) which does not result from any work performed by Fenne for the Company.

4.5 **Delivery of Material.** Fenne shall, upon execution of this Agreement, return to the Company any and all tangible items of any nature relating to any intellectual property of the Company, including, but not limited to, any and all copies of code, including source code, for any programs developed, in the process of development or used by the Company or any of its employees or agents since January 1, 1997.

ARTICLE V

RELEASE

5.1 **Release.** The Company and Fenne, for itself or himself, and for its or his heirs, personal or legal representatives, executors, successors and assigns, shareholders, directors, officers, affiliates and agents, hereby releases and forever discharges the other and its or his respective heirs, personal or legal representatives, executors, successors and assigns, shareholders, directors, officers and agents, of and from any further obligation, liability, claim, demand and cause of action of every kind and nature, including but not limited to any claims arising out of Fenne's previous employment with or ownership interest in the Company, which be or it has, had or may have against the other, whether based on statute, common law, rule or regulation, whether in law or in equity, whether liquidated or unliquidated, whether known or unknown, for, upon, or by reason of, any cause or thing, whatsoever, on or at any time before the date of this Agreement. Notwithstanding the foregoing, the release granted by the Company in favor of Fenne pursuant to this Section 5.1 is expressly conditioned on Fenne's full compliance with the terms of this Agreement and shall be void ab initio if Fenne breaches this Agreement.

5.2 **Waiver of Code Provisions.** The Company and Fenne hereby acknowledge and agree that it is their intention that this Agreement shall be effective as a full and final accord and satisfaction and settlement of and as a bar to each and every claim, demand, debt, account, reckoning, liability, obligation, cost, expense, lien, action and cause of action, heretofore referred to and released, which either party hereto has, or has had against the other party hereto. In connection with such waiver and relinquishment, the Company and Fenne hereby acknowledge that they are aware that they or their attorney may hereafter discover facts different from or in addition

to the facts which they or their attorney now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to fully, finally, absolutely and forever settle any and all claims, disputes and differences which now exist or heretofore have existed between either party to this Agreement, and that in furtherance of such intention the mutual releases herein given shall be and remain in effect as full and complete general mutual releases notwithstanding the discovery of any such different or additional facts. Therefore, each of the parties hereto acknowledges that they have been informed by their respective attorneys and/or advisors of, and that they are familiar with, Section 1542 of the Civil Code of the State of California which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

The Company and Femme do hereby abandon, release, waive and relinquish all rights and benefits which they may acquire under Section 1542 of the Civil Code of the State of California pertaining to the subject matter of this Agreement.

5.3 **Covenant not to Sue.** Each of the Company and Femme hereby agree not to file, institute or directly or indirectly cause to be filed or instituted any suit, action or proceeding of any kind against the other party or his or its personal or legal representatives, executors, successors and assigns, shareholders, directors, officers or agents based on any obligation, liability, claim, demand or cause of action of any kind or nature, including but not limited to any claims arising out of Femme's previous employment with or ownership interest in the Company, which he or it has, had or may have against such persons, whether based on statute, common law, rule or regulation, whether in law or in equity, whether liquidated or unliquidated, whether known or unknown, for, upon, or by reason of any matter, cause or thing, whatsoever, on or at any time before the date of this Agreement.

ARTICLE VI

INDEMNIFICATION

6.1 **Mutual Indemnification.** The Company and Femme do hereby agree to indemnify, defend and hold harmless the other party, its directors, officers, employees, agents and successors and assigns, from and of any and all actions, causes of action, suits, debts, covenants, controversies, agreements, promises, liabilities, torts, negligence, errors, obligations, fees, damages, judgments, claims, counterclaims, costs and expenses, including reasonable attorneys' fees, suffered or incurred by either party, its directors, officers, employees, agents, and successors and assigns, arising out of or in connection with the Business of the Company prior to the date of this Agreement.

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ARTICLE VII MISCELLANEOUS

7.1 **Notice of Future Financings.** The Company shall provide notice to Femme at least five (5) days before the closing of any future transaction, including a private placement of securities or an initial public offering of the Company's capital stock, in which the Company obtains financing.

7.2 **Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given, delivered and received (a) when delivered, if delivered personally, (b) four days after mailing, when sent by registered or certified mail, return receipt requested and postage prepaid, (c) one business day after delivery to a private courier service, when delivered to a private courier service providing documented overnight service, and (d) on the date of delivery if delivered by telecopy, receipt confirmed, provided that a confirmation copy is sent on the next business day by first class mail, postage prepaid, in each case addressed as follows:

To Femme at his home address.

With a copy to:

Steven Kuhn
28202 Cabot Rd.
Laguna Nigel, California 92677
Ph: (949)364-0600
Fax: (949)364-0606

To Company at:

Pixelon, Inc.
31732 Rancho Viejo Road, Suite D
San Juan Capistrano, California 92675
Attn: Stephanie Kitzes
Ph: (949) 248-4655
Fax: (949) 248-9930

With a copy to:

Shelley & Froelich Ltd.
444 North Michigan Avenue, Suite 2400
Chicago, IL 60611
Attention: Mark Bonelli
Ph: (312) 836-4014

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Fax: (312) 527-5921

Any party may change its address for purposes of this paragraph by giving the other party written notice of the new address in the manner set forth above.

7.3 Entire Agreement; Amendments, Etc. This Agreement contains the entire agreement and understanding of the parties hereto, and supercedes all prior agreements and understandings relating to the subject matter thereof. Except as provided in Sections 3.3.2 and 7.6, no modification, amendment, waiver or alteration of this Agreement or any provision or term hereof shall in any event be effective unless the same shall be in writing, executed by both parties hereto, and any waiver so given shall be effective only in the specific instance and for the specific purpose for which given.

7.4 Benefit. This Agreement shall be binding upon, and inure to the benefit of, and shall be enforceable by, the heirs, successors, legal representatives and permitted assignees of Fenne and the successors, assignees and transferees of the Company. This Agreement or any right or interest hereunder may not be assigned by Fenne without the prior written consent of the Company. Fenne acknowledges that he has obtained independent counsel to represent him in connection with the subject matter of this Agreement, and has not been provided representation by counsel to the Company with respect to the subject matter of this Agreement.

7.5 No Waiver. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder or pursuant hereto shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or pursuant thereto.

7.6 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law but, if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any part of any covenant or other provision in this Agreement is determined by a court of law to be overly broad thereby making the covenant unenforceable, the parties hereto agree, and it is their desire, that the court shall substitute a judicially enforceable limitation in its place, and that as so modified the covenant shall be binding upon the parties as if originally set forth herein.

7.7 Mutual Recession. The terms of this Agreement are contractual and are the result of negotiation between the parties. In construing this Agreement, or any of its terms, the same shall not be construed against any party because that party or that party's legal representative drafted such provision of the Agreement.

7.8 Compliance and Headings. Time is of the essence of this Agreement. The headings in this Agreement are intended to be for convenience and reference only, and shall not define or limit the scope, extent or intent or otherwise affect the meaning of any portion hereof.

7.9 Governing Law. Except where a provision of California law is specifically cited herein, the parties agree that this Agreement shall be governed by, interpreted and construed in accordance with the laws of the State of Delaware, and the parties agree that any suit, action or proceeding with respect to this Agreement shall be brought in the courts of Orange County in the State of California or in the U.S. District Court for the Central District of California. The parties hereto hereby accept the exclusive jurisdiction of those courts for the purpose of any such suit, action or proceeding. Venue for any such action, in addition to any other venue permitted by statute, will be Orange County, California.

7.10 Arbitration. Except as expressly contemplated by Article III, any dispute arising between the parties pursuant to this Agreement shall be submitted to binding arbitration. Any such arbitration proceeding will be conducted in Orange County, California and except as otherwise provided in this Agreement, will be conducted in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. One arbitrator shall conduct the proceedings. The arbitrator shall be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitrator shall allow such discovery as the arbitrator determines appropriate under the circumstances. The arbitrator shall determine which party, if either, prevailed and shall award the prevailing party its costs and reasonable attorneys fees. The award and decision of the arbitrator shall be conclusive and binding on all parties to this Agreement and judgment on the award may be entered in any court of competent jurisdiction. The parties acknowledge and agree that any arbitration award may be enforced against either or both of them in a court of competent jurisdiction and each waives any right to contest the validity or enforceability of such award. The parties further agree to be bound by the provisions of any statute of limitations which would be applicable in a court of law to the controversy or claim which is the subject of any arbitration proceeding initiated under this Agreement. The parties further agree that they are entitled in any arbitration proceeding to the entry of an order, by a court of competent jurisdiction pursuant to an opinion of the arbitrator, for specific performance of any of the requirements of this Agreement. The parties further agree that the arbitrator shall provide a statement of reasons explaining the basis of the decision rendered.

7.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered as of the day and year first above written.

By: B. B. Madsen, CFO

ADAM MICHAEL FENNE

TOTAL

9917 - Advertisements by MP	Type	Date	Name	Items	Media	Class	CR	Spots	Amount	Balance
9917	Check	7/16/1999	003	Cashiers Pledge -	MP reel	Advertise		2000 - Assoc.	1,305.00	
9917	Check	7/16/1999	3078	Blind Cash	MP & SP	Advertise		1000 - F&M	905.74	
9917	Check	7/16/1999	CLST	Poly Cash	MP	Advertise		2000 - Assoc.	296.00	
9917	Check	7/16/1999	2811	Idg. Sign	by MP	Advertise		1000 - F&M	74.18	
9917	Check	7/16/1999	2832	Poly Cash	MP Car	Advertise		1000 - F&M	405.35	
9917	Check	7/20/1999	2710	Acso Station	MP Car	Advertise		1000 - F&M	4,111.	
9917	Check	7/20/1999	3714	Poly Cash	MP	Advertise		1000 - F&M	743.21	
9917	Check	8/2/1999	2749	Poly Cash	MP	Advertise		1000 - F&M	4,500.	
9917	Check	8/2/1999	2752	Cashiers Pledge -	MP	Advertise		1000 - F&M	4,500.	
9917	Check	8/2/1999	2804	Cashiers Pledge -	MP	Advertise		1000 - F&M	1,500.00	
9917	Check	8/2/1999	2809	Poly Cash	MP	Advertise		1000 - Assoc.	1,500.00	
9917	Check	8/13/1999	CMT	Poly Cash	MP	Advertise		1000 - Assoc.	396.00	
9917	Check	8/20/1999	2817	Poly Cash	MP	Advertise		1000 - Assoc.	720.00	
9917	Check	8/20/1999	2846	Poly Cash	MP	Advertise		1000 - Assoc.	1,500.22	
9917	Check	8/20/1999	2854	Poly Cash	MP	Advertise		1000 - F&M	14,743.86	
9917	Check	8/20/1999	2879	Poly Cash	MP	Advertise		1000 - F&M	1,504.00	
9917	Check	8/20/1999	2834	Poly Cash	MP	Advertise		1000 - F&M	742.48	
9917	Check	8/20/1999	2837	Poly Cash	MP	Advertise		1000 - F&M	743.03	
9917	Check	8/20/1999	2847	Poly Cash	MP	Advertise		1000 - F&M	744.23	
9917	Check	8/20/1999	2858	Poly Cash	MP	Advertise		1000 - F&M	748.82	
9917	Check	8/20/1999	2859	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2862	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2864	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2866	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2868	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2870	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2872	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2874	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2876	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2878	Poly Cash	MP	Advertise		1000 - F&M	749.42	
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9917	Check	8/20/1999	2882	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2884	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2886	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2888	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2890	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2892	Poly Cash	MP	Advertise		1000 - F&M	749.42	
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9917	Check	8/20/1999	2972	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2974	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	2976	Poly Cash	MP	Advertise		1000 - F&M	749.42	
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9917	Check	8/20/1999	3076	Poly Cash	MP	Advertise		1000 - F&M	749.42	
9917	Check	8/20/1999	3078	Poly Cash						

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57,493

Pixetlon, Inc.
Transaction Detail By Account
July 1998 through June 1999

[illegible]

PIXELON, INC.

CONFIDENTIALITY AND TRADE SECRET AGREEMENT

The parties to this Confidentiality and Trade Secret Agreement ("Agreement") are Pixelon, Inc. ("Pixelon") and Michael Fenne ("Employee").

Whereas, Employee is employed by Pixelon and Pixelon will be revealing Confidential Information and Trade Secrets to Employee; and

Whereas, Pixelon and Employee wish to protect such Confidential Information and Trade Secrets and acknowledge that Pixelon would be substantially harmed by competitors knowing its Confidential Information and Trade Secrets;

Therefore, for good and valuable consideration, which the parties agree and warrant is sufficient to support enforcement of this Agreement, Pixelon and Employee hereby agree as follows:

1. In reliance upon this Agreement, Pixelon (acting as a "Disclosing Party") may disclose to Employee (acting as a "Receiving Party") Confidential Information of the Disclosing Party. Receiving Party hereby acknowledges and agrees that certain items of information currently in Receiving Party's possession, or later to come into Receiving Party's possession, presently constitute, or shall constitute in the future, valuable Trade Secrets or proprietary business information of Disclosing Party. Such items of information, which are herein collectively referred to as the "Confidential Information," shall include but are not limited to the following:

- (i) Product formulae, customer requirements, and all other technical data used or useful in Disclosing Party's business or related to any research and development activities carried on by Disclosing Party.
- (ii) All customer lists, accounting, costs, sales, and other information relating to Disclosing Party's business.
- (iii) All other information of any type or description whatsoever which is protected by law as a Trade Secret or as proprietary information of Disclosing Party, or which has been designated to Receiving Party either orally or in writing as a Trade Secret or proprietary information of Disclosing Party. For purposes of the foregoing sentence, "Trade Secret" shall include, without limitation, any formula, device, or compilation of information not generally known in the industry which Disclosing Party uses in its business and which gives Disclosing Party an opportunity to obtain an advantage over competitors who do not know it.

EXHIBIT 1
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- (iv) All Confidential Information (as herein defined) of all customers, contractors, and others with whom Disclosing Party had, has or will have a business relationship learned or acquired by Receiving Party during the course of or as a result of Receiving Party's contractual relationship with Disclosing Party.

All of the foregoing information shall be deemed "Confidential Information" until such time as it becomes generally known in the industry by means other than improper disclosures or other improper action or inaction made by Receiving Party.

2. Receiving Party shall not, directly or indirectly, either during the term of its relationship with Disclosing Party or thereafter, disclose or use the Confidential Information other than in the business of or as directed by, Disclosing Party without the prior written consent of Disclosing Party.

3. Receiving Party shall not, directly or indirectly, either during the term of its relationship with Disclosing Party or thereafter, take, copy, or remove any of the Confidential Information from Disclosing Party's premises, whether in the form of manuals, printed sheets, reproductions, personal notes, or otherwise, without the prior written consent of Disclosing Party.

4. Receiving Party shall at all times and forever safeguard and protect all of the Confidential Information of Disclosing Party to prevent its being exposed to, or taken by, unauthorized persons, and when entrusted to Receiving Party will exercise its best efforts to assure its safekeeping.

5. Upon request of a Disclosing Party, Receiving Party will deliver to Disclosing Party, within three (3) days of receiving such request, all Confidential Information which is in the possession or control of the Receiving Party.

6. In any action at law or in equity to enforce or construe any of the provisions or rights under this Agreement, the unsuccessful party or parties to such litigation, as determined by the courts in a final judgment or decree, shall pay the successful party or parties all costs, expenses, and attorneys' fees incurred therein by such successful party or parties (including without limitation such costs, expenses, and fees on any appeals), and if such successful party or parties shall recover judgment in any such action or proceeding, such costs, expenses, and attorneys' fees shall be included in as part of such judgment. Any litigation concerning this Agreement shall be venue in Orange County, California.

7. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

EXHIBIT 2
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